



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2021: No. 246

BETWEEN:

SAMUEL ANDREW BANKS

Plaintiff

v

SIMON STOREY

and

DEIRDRE STOREY

Defendants

RULING

Date of Hearing: 23 July 2026
Date of Ruling: 18 August 2026

Appearances: Jeffrey Elkinson, Britt Smith, Harneys Bermuda Limited, for Plaintiff
Oliver MacKay, Padraic O'Shaughnessy, Carey Olsen Bermuda Limited, for Defendants

RULING of Mussenden CJ

Introduction

1. This matter appears before me on the Defendants' Summons dated 23 June 2026 for a stay of execution pursuant to Order 45, rule 11 of the Rules of the Supreme Court 1985 ("**RSC**") and a case management stay, pursuant to the inherent jurisdiction of the Court, in relation to the continuation of the proceedings to a trial on damages, both stay applications pending appeal. Alternatively, the Defendants seek an extension of time for complying with the directions at paragraph 27 and 28 of the Direction Order dated 18 May 2026 (the "**Directions Order**"). The application is supported by the affidavit of Charlotte Donnelly sworn 19 June 2026 ("**Donnelly2**").
2. On 21 April 2026 I handed down the liability judgment (the "**Judgment**") and made a Judgment Order (the "**Judgment Order**") of even date. On 18 May 2026 a directions hearing took place before me and I made the Directions Order. On 2 June 2026 the Defendants filed a Notice of Appeal. On 27 June 2026 I listed a quantum trial for hearing on 15 – 16 October 2026 (the "**Quantum Trial**").
3. The Defendants seek a stay of execution of the part of the Judgment Order which is capable of execution, and subject to the Defendants' appeal, pending determination of the appeal. They also seek a case management stay in relation to the parts of the Directions Order in respect of the determination of quantum at trial, including those directing the filing of evidence for, and the procedural steps to be taken for the Quantum Trial.
4. Mr. MacKay submitted that as the Judgment only dealt with liability, there is no judgment debt which can be enforced. However, the Court did make non-monetary orders in the form of mandatory and prohibitory injunctions.
5. Mr. Banks opposes the stay application.

The Legal Principles – Stay of Execution

6. Order 45, rule 11 provides that a party may apply to the Court for a stay of execution of the judgment, or order or other relief on the grounds of matters that have occurred since the judgment or order and the Court may grant such relief, and in such terms, as it thinks fit.
7. The relevant principles in respect of considering whether to grant a stay of execution are not in dispute. The starting point is that an appeal does not operate as a stay and that a successful party is not to be prevented from enforcing his judgment even though an appeal is pending. The principles were summarized by Hargun J in *Ivanishvili et al v Credit Suisse Life (Bermuda) Limited* [2022] SC (Bda) 56 Civ and the test for granting stay of execution was set out in *Lines Overseas Management Ltd. v Green* [2002] Bda LR 24 [at pages 145 – 146], which was also referred to in the ruling by this Court in *Sinopoly Strategic Investment Limited v FDG Kinetic Limited* [2021] SC (Bda) 55 Com at 70:

“One starts with the assumption that the successful Plaintiff is not to be prevented from enforcing the judgment even though an appeal is pending. The Winchester Cigarette case, mentioned above. In holding the ‘balancing of advantage’ full and proper weight is given to those starting principles that there must be good reason to deprive the successful Plaintiff of the right to enforce the money judgment and that the mere existence of an arguable ground of appeal is not by itself such a reason. The Winchester Cigarette case. The discretion is unfettered and ‘it must be exercised judicially and to provide guidance.’ Hobhouse L.J. in the Winchester Cigarette case, mentioned above, at 6.

There must be an arguable appeal, being one which ‘has some prospect of success.’ Arab Monetary Fund v Hashim and others (No.9) Ch. D. 29 July 1994. (Lexis transcript). In the instant case though the Defendant has a right of appeal the prospects of success of the grounds of appeal appear to me to be not impressive but it is not suggested that they are unarguable.

‘It is also relevant that the Defendant can say that without a stay he would be ruined regardless of the outcome of the appeal (see Linotype—Hell Finance) The appellant must show some special circumstances which take the case out of the ordinary so that the ordinary rule should not apply, and that a stay be granted.’ Slough Estates plc v Welwyn Hatfield District Council [1996] 2 PLR 50 at 77 May J. (Lexis transcript).

'I am to exercise a discretionary jurisdiction as a matter of 'common sense and balance of advantage,' to quote Balcombe L.J. I take the balance of advantage to be equivalent to balance of fairness between the parties.' Slough Estates plc case at 77, May J. (Lexis transcript).

In determining the balance I must act 'judicially' and must have regard to 'all the circumstances of the case,' Winchester Cigarette case , mentioned above, and I must make a decision 'which best accords with the interest of justice.' Combi (Singapore) Pte Ltd v Sriram and another, Court of Appeal (Civil Division) 23 July 1997 (Lexis transcript), Phillips L.J. at 4. (Lexis transcript).

But 'where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice.' Combi case, mentioned above, Phillips L.J. at 4."

8. In *In the Matter of an Application for Information about a Trust* [2013] SC (Bda) 45 App, Hellman J, sitting as single Justice of the Court of Appeal, [at 16] referred to the principles summarised by Sullivan J in *Department of Environment v Downs* [2009] EWCA Civ 257 [at 8]:

"A stay is the exception rather than the rule, solid grounds have to be put forward by the party seeking a stay, and, if such grounds are established, then the court will undertake a balancing exercise weighing the risks of injustice to each side if a stay is or is not granted."

9. In *Island Construction Ltd v Phillips and Phillips* [2019] Bda LR 92 [at 24], Subair Williams J referred to the White Book 1999 commentary under Order 59/13/2, stating that it provided valuable guidance on the exercise of judicial discretion in considering whether or not to grant or impose a stay.

*"...Neither the court below nor the Court of Appeal will grant a stay unless satisfied that there are good reasons for doing so. The Court does not 'make a practice of depriving a successful litigant of the fruits of his litigation, and locking up funds to which prima facie he is entitled', pending an appeal (*The Annot Lyle* (1886) 11 P. 114 at 116, CA; *Monk v. Bartram* [1891] 1 Q.B. 346); and this applies not merely to execution but to the prosecution of proceedings under the judgment or order appealed from – for example¹ ... But the court is likely to grant a stay where the appeal would otherwise be rendered nugatory (*Wilson v. Church (No.2)* (1879) 12 Ch.D.454 at 458,459, CA), or the appellant would suffer loss which could not be compensated in damages. The question whether or not to grant a stay is entirely in the discretion of*

¹ At this point, the following words were omitted: "*inquiries (Shaw v Holland [1900] 2 Ch 305) or on account of profits in a passing-off action (Coleman & Co v Smith & Co Ltd [1911] 2 Ch. 572) or the trial of issues of fact under a judgment on a preliminary question of law (Re Palmer's Trade Mark (1883) 22 Ch. D. 88)*"

the court (Becker v Earl's Court Ltd (1911) 56 S.J. 206; The Ratata [1897] P. 118, p. 132; Att-Gen. v. Emerson (1889) 24 Q.B.D. 56 at 58, 59) and the court will grant it where the special circumstances of the case so require. Execution might be stayed, for example, where the judgment is in favour of a person resident out of, or about to leave, the jurisdiction (see Wooton v. Sievier (1913) 30 T.L.R. 165, CA). And if, under an order of the court, money is to be paid out of a fund and distributed among a large number of persons resident abroad, an injunction may even be granted, restraining dealings with the fund pending an appeal...

Where the appeal is against an award of damages, the long established practice is that a stay will normally be granted only where the appellant satisfies the court that, if the damages are paid, then there will be no reasonable prospect of his recovering them in the event of the appeal succeeding (Atkins v Great Western Railway Co. (1886) 2 T.L.R. 400, following Barker v. Lavery (1885) 14 Q.B.D. 769, CA... Nowadays the court may be prepared (provided that the appeal has sufficient merit) to grant a stay, even where the test is not satisfied, if enforcement of the money judgment under appeal would result in the appellant's house being sold or his business being closed down. But if such a stay is granted the court should impose terms which (so far as possible) ensure that the respondent is paid without delay, if the appeal fails, and that appellant is prevented from depleting his assets in the meantime, except for any necessary expenditure. This approach was endorsed in Lynotype-Hell Finance Ltd v. Baker [1992] 4 ALL E.R. 887 (Staughton L.J., sitting as a single Lord Justice). It was also endorsed in Winchester Cigarette Machinery Ltd v. Payne (No.2) (1993) The Times, December 15, but the Court made it clear that a stay should only be granted where there are good reasons for departing from the starting principle that the successful party should not be deprived of the fruits of the judgment in his favour. The Court also emphasised that indications in past cases do not fetter the scope of the Court's discretion." [Emphasis added]

10. In respect of the balancing exercise to be taken by the Court, in *Bidzina Ivanishvili et al v Credit Suisse Life (Bermuda) Limited* [2022] SC (Bda) 56 Civ [at 48] Hargun CJ referred to the questions raised by Clarke LJ in *Hammond Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ 2065:

"By CPR rule 52.7, unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of execution of the orders of the lower court. It follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?" [Emphasis added]

The Legal Principles – Case Management Stay

11. In respect of the legal principles giving rise to a case management stay and the Court's inherent jurisdiction to grant a stay, in *Mexico Infrastructure Finance LLC v The Corporation of Hamilton* [2024] SC (Bda) 75 Civ Subair Williams J stated [at 26 – 28]:

“26. In a recently reported ruling, Corbin Erisa Opportunity Fund Ltd et al v Argo Group International Holdings et al [2024] SC (Bda) 69 civ. (3 December 2024), this Court was concerned with the legal principles which give rise to a case management stay. In the opening paragraphs outlining the law in this regard, I referred to the Court's duty to safeguard the rights of a civil litigant to be given a fair hearing within a reasonable time. I also addressed the source of the Court's unfettered discretionary power to grant a stay. At [paras 57-59] I said:

“..."

The source of the Court's powers to stay litigation proceedings always includes its inherent jurisdiction. In Re Celestial Nutrifoods (in liquidation) [2017] Bda LR 11 Kawaley CJ explained that the Court, independent of the statutory insolvency stay powers with which he was concerned, is empowered under its inherent jurisdiction to impose a stay of proceedings. Sections 12 and 18 of the Supreme Court Act 1905 is where the Court derives its authority to exercise these fundamental powers with which it never separates.

The use of the Court's inherent jurisdiction is also relied on as a matter of English law. Halsbury's Laws of England / Civil Procedure Volume 12 (2015) para 1039 provides:

“A stay of proceedings arises under an order of the court... which puts a stop or 'stay' on the further conduct of the proceedings in that court at the stage which they have then reached, so that the parties are precluded thereafter from taking any further step in the proceedings... The object of the order is to avoid the trial or hearing of the claim taking place, where the court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process...

The court's power to stay proceedings may be exercised under particular statutory provisions..., or under the Civil Procedure Rules...or under the court's inherent jurisdiction...or under one or all of these powers, since they are cumulative, not exclusive, in their operation.””

27. The Court's inherent jurisdiction to grant a stay is also explained in the regularly-cited English High Court decision in *Reichhold Norway A.S.A and Another v Goldman Sachs International (a Firm)* [1999] 1 ALL ER (Comm) 40. Moore-Bick J (as he then was) said at page 46:

“The court’s power to stay proceedings is part of its inherent jurisdiction which is expressly preserved by s.49(3) of the Supreme Court Act 1981. It is exercised under a wide range of circumstances to achieve a wide variety of ends. Subject only to statutory restrictions, the jurisdiction to stay proceedings is unfettered and depends only on the exercise of the court’s discretion in the interests of justice. I am in no doubt, therefore, that I do have jurisdiction to stay the present proceedings; the question is whether it would ever be right to do so in a case such as the present, and if so under what circumstances.”

28. As was the case in Corbin Erisa Opportunity Fund Ltd et al v Argo Group International Holdings et al, the application before this Court is for a stay on case management grounds. The Court’s wide discretionary powers to grant or to refuse an application for stay is shaped by its general case management powers and obligations under the Overriding Objective. The Court is dutybound to ensure that cases are dealt with expeditiously and fairly. The Court must also provide an equal footing platform between the parties and be always mindful of the need to save expense.”

12. In *J Lucas (Batteries) Ltd v Gaedor Ltd* [1978] RPC 389, the English Court of Appeal considered, in the context of a patent case requiring an inquiry as to damages, whether a waste of time and cost was a special circumstance for the granting of a stay. Sir David Cairns stated [at 393]:

“... there is a public interest in avoiding waste of time and money on proceedings which become abortive. It is because that I am satisfied that the judge was entitled to take the view that such waste would be exceptionally great in this case that in my view he was entitled to regard this as a special circumstance.”

13. In *Jean-Pierre Malliez v 1) Redland Plasterboard Overseas Limited, 2) Norgips S.A.* 1992 WL 12678646 Balcombe LJ of the Court of Appeal stated:

“The assessment of costs will be expensive because of the nature of the hearing. Again, without going into further detail, it will probably run into at least four figures. It is accepted by the solicitor for the plaintiff, who has put evidence in on this application, that the costs of that taxation will be wasted if the appeal were to succeed, as will be the costs of the assessment of damages. The assessment of damages is itself likely to be a very lengthy and expensive process. There will have to be pleadings and discovery. ...

In the end it comes down to balancing all that against the undoubted delay which will be caused to the plaintiff if the proceedings on the taxation of costs and the assessment of damages are stayed pending the appeal and the appeal fails. In that event he will be delayed in getting his money for a year, 18 months, or possibly longer. As I say, the costs of the assessment could run to six figures and the taxation of costs to at least five, which again would be wasted if the appeal were to succeed. So one has to balance the

potential wastage of money and of court time against the delay which would be caused to the plaintiff if the appeal fails. ...

The balance is between wasted money on the one hand and delay to the plaintiff in being kept out of his money on the other. As I indicated in the course of argument by counsel, that involves this court at least taking a view as to the prospects of the appeal. Clearly we cannot go very far into that; we do not have the material. The highest I will put it is that, having read the judgment and the other material before us, I am unable to say that this appeal is unarguable. There are clearly substantive points which would have to be dealt with by this court. On that basis, striking the balance in the way in which I have said, I am quite clear in my mind that there should be a stay. So far as the taxation of costs is concerned, it seems to me that this should be an absolute stay.

So far as the assessment of damages is concerned, however, it seems to me that the compromise Lord Justice Steyn suggested in the course of argument would eliminate some of the delay to the plaintiff while at the same time putting less at risk the amount of the wasted costs. That compromise is that the assessment of damages should be allowed to proceed until the close of the pleadings which will be necessary on that assessment and completion of discovery, but before the exchange of any experts' reports and certainly before any trial of the assessment.

Accordingly, on this application I would order that the taxation of costs be stayed pending the hearing of the appeal and that the assessment of damages be allowed to go as far as close of pleadings and discovery and that thereafter all proceedings on the assessment be stayed pending the determination of the appeal." [Emphasis added]

Defendants' Submissions

Stay of Execution

14. Mr. MacKay made several submissions in support of the application for a stay of execution as follows:

- a. The appeal in relation to the Admitted Construction has some prospect of success.
- b. Thus, there are good reasons to grant a stay of execution of paragraphs 174 and 416(b) of the Judgment and paragraph 12 of the Judgment Order by which the Defendants are required to remove the Admitted Construction, pending determination of Ground 6 of the appeal.
- c. If the stay is refused then planning permission will be required to remove the offending portion of the wall and patio. If the appeal is successful, then the

Admitted Construction will not have to be removed. That part of the appeal would be rendered nugatory.

Case Management Stay

15. Mr. MacKay made several submissions in respect of a case management stay.
- a. No damages have yet been assessed and as such there is no enforceable order for the payment of quantified damages to either party.
 - b. If the Defendants' appeal is successful on any one or more aspects of the Judgment, then the exercise in quantifying certain damages at trial will have been a waste of time and costs. Also, there is the likelihood of a second damages trial.
 - c. If a stay is granted, time and expense of preparing and conducting a 2 day trial with expert evidence and cross-examination of witnesses will be avoided.
 - d. If a stay is refused, the parties will have to proceed with further expert evidence and skeleton arguments for the Quantum Trial and then the trial will have to be conducted with cross-examination of witnesses and submissions on costs.
 - e. The majority of the issues to be determined at the Quantum Trial will, in the event of a successful appeal, be either abortive or require further consideration after appeal.
 - f. The interests of justice and the pursuit of the Overriding Objective militate in favour of a stay.
 - g. Two out of ten heads of damages are not subject to appeal: (i) damages awarded to the Defendants for trespass in relation to the chain link fence erected by Mr. Banks on the Grass Verge pursuant to paragraph 29 of the Judgment Order; and (ii) aggravated damages awarded to Mr. Banks for trespass in the GW Woodland Reserve, the destruction of vegetation and the Admitted Planting pursuant to paragraph 33 of the Judgment Order.
 - h. Of the ten heads of damages awarded in the Judgment, eight are subject to appeal as set out in the following paragraphs.
 - i. Trespass Damages – There is a prospect of success because it relates to the application of the principle of concealment and is related to the limitation defence. If successful, the assessment of quantum would have to be reconsidered.

- j. Construction Damages – If successful the Defendants will not have to remove the Admitted Construction and quantum would be different, taking into account that the Admitted Construction will remain in situ.
 - k. Excavation Damages and Backfill Damages – There is a prospect of success and if successful, quantum will have to be reconsidered.
 - l. Conduct Damages – There is a prospect of success and if successful the Defendants' liability would fall away and the determination of the quantum, which will include cross-examination of Mr. Banks could be unnecessary.
 - m. Gateway Damages – If successful, then Mr. Banks' liability would either fall away or be quantified alongside an order for removal, with any prior determination being rendered useless.
 - n. CMP Damages – This issue will require expert evidence from both parties. If successful, the Defendants' liability could be significantly reduced and the expert evidence rendered useless or required again.
 - o. User Damages – If successful and Mr. Banks has to remove the utility cables, then the Court will have to reconsider damages only up to the date of the removal of cables, as opposed to in perpetuity.
16. Mr. MacKay submitted that proceeding with the Quantum Trial is premature and unnecessary as the outcome of the appeal could negate the Defendants' liability on several heads of damage and materially impact the quantum determination. If a stay is refused and the appeal is successful, a second Quantum Trial would almost certainly be required, including further expert evidence and legal submissions. However, granting a stay does not materially prejudice Mr. Banks as there are no quantified damages to be enforced.

Mr. Banks' Submissions

17. Mr. Elkinson submitted several reasons to not grant the stay:
- a. The Defendants have advanced no cogent evidence of irremediable harm.
 - b. The suggested strength of the appeal does not displace the ordinary rule against a stay.

- c. The starting point is that a successful litigant is not to be prevented from enforcing a judgment merely because an appeal is pending.
- d. A stay is the exception, not the rule.
- e. The applicant must put forward cogent, solid grounds - the Court then balances the risk of injustice to each side.
- f. Per *Otkritie International Investment Management Ltd & Ors v Urumov & Ors* [2014] EWHC 755 (Comm) [at 22] (adopted in *Ivanishvili*): (i) an appeal does not itself stay execution; (ii) the correct starting point favours the successful party; (iii) a stay requires solid grounds of irremediable harm, not the ordinary inconvenience of complying with an adverse judgment; (iv) the essential question is whether there is a risk of injustice – including whether refusal would stifle the appeal, or whether a grant would leave the plaintiff unable to enforce; and (v) the strength of the appeal may be relevant only where the justice of the ordinary rule is otherwise in doubt.
- g. The Defendants have failed to show a real risk of injustice by cogent evidence.

18. Mr. Elkinson submitted that none of the Defendants' grounds meets the standard.

19. In respect of Ground 1 about the conservation management plan expert, Mr. Elkinson submitted that the Defendants' argument that instructing a new expert was onerous and justified both a stay and a lengthy extension beyond the 35 days already sought is not credible. This is because they have their own trial witness, Ciaran Keaveney who is such an expert and who has prepared a conservation management plan for the Defendants' property Longhouse in 2021 and has acted for the Defendants on retroactive planning applications since 2016.

20. In respect of Ground 2 that the Quantum Trial is premature, stifling and would be a waste of costs, it was fixed by consent following the Order of 18 May 2026 and an agreed Notice of Hearing for 15-16 October. The Notice of Appeal was filed on 2 June 2026 yet no indication of an intended appeal was given at the time the Order made or at any time before the Defendants' summons was served. Proceeding with the Quantum Trial will not stifle the appeal.

21. In respect of Ground 3 the Defendants seek a stay concerning the Admitted Construction, which is the 90 sq ft structure that was built on Mr. Banks' land without planning permission, without regard to setback, without engineering drawings and without a building permit. The application for a stay is inconsistent with Mr. Storey's evidence at trial, and included in the Judgment, that if the structure needs to be removed "to find peace", it will be removed, as he did not want to be at war with his neighbor. The Defendants are not now entitled to say the opposite.
22. Mr. Elkinson submitted that the Notice of Appeal only goes to quantum, the balance of the appeal challenging findings of fact and credibility issues with Mr. Storey, which an appellate court will not disturb lightly. Thus, there is no basis to treat the appeal as sufficiently strong to displace the ordinary rule.
23. Mr. Elkinson submitted that the application is the latest in a pattern of delay and resistance to compliance, necessitating applications to the Court. No cogent evidence of irremediable harm has been advanced. Mr. Banks' witness statement sets out that he continues to live with the consequences of the Defendants' conduct and has been left out of pocket as to costs pending assessment.

Analysis

Stay of Execution

24. The stay of execution is in relation to the Admitted Construction. I have reviewed the ground of appeal in relation to the Admitted Construction and I am unable to say that it is unarguable. In my view, I should grant the stay of execution in respect of removing the Admitted Construction because if no stay is granted and the wall is removed, then it will render any appeal nugatory, especially if the appeal is successful. I am mindful that in oral arguments, Mr. Elkinson submitted that Mr. Banks was prepared to rebuild the Admitted Construction if the Defendants were successful on appeal. However, in my view, in taking a commonsense approach there is no proper basis for directing the Admitted Construction to be removed now, for it then to be rebuilt at Mr. Banks' expense if the Defendants are

successful on appeal. To that point, there will be time and resources incurred in seeking planning permission and carry out the works to remove the Admitted Construction. These will be wasted costs if the appeal is successful. I am cognizant that Mr. Storey said in evidence that if the Admitted Construction needs to be removed, then he would remove it, in order to find peace and not be at war with Mr. Banks. Giving that statement a wide interpretation, I take that to mean at the end of the appeal process.

25. In granting the stay of execution, if the Defendants fail on appeal, then the Admitted Construction can be removed, thus there are no risks to Mr. Banks that the judgment cannot be enforced. In my view, in all the circumstances, there are good reasons to grant the stay of execution, namely the wasted costs of removing the Admitted Construction if the appeal is successful. Thus, in undertaking a balancing exercise, in my view, there will be injustice to the Defendants if the stay is not granted and the appeal succeeds. In light of the above reasons, I am satisfied to exercise my discretion to grant a stay of execution in respect of the Admitted Construction.

Case Management Stay

26. I have approached this application with the starting principle in mind that a successful litigant is not to be prevented from enforcing a judgment merely because an appeal is pending. In my view, there will be considerable costs incurred with the time and resources spent preparing for and conducting the Quantum Trial, including instructing expert witnesses and cross-examination of some witnesses. There will also be judicial time applied to all aspects of the matter. I am cognizant of the Overriding Objective as set out in the Rules of the Supreme Court 1985 where it states that the Court should deal with cases justly, which includes: (b) saving expense; (c) dealing with the case in ways which are proportionate - (i) to the amount of money involved and (iii) to the complexity of the issues; (d) ensuring that cases are dealt with expeditiously and fairly; and (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.

27. I have reviewed the grounds of appeal in this case. They are aimed at the majority of the awards of damages that the Court awarded in the Judgment and I am unable to say that they are unarguable.
28. If I do not grant a stay of proceedings and hold the Quantum Trial, and the Defendants' appeal is not successful then there will be no need to revisit the Quantum Trial judgment. Subject to any appeal on the quantum, then Mr. Banks would be able to proceed with enforcing his money judgments. On the other hand, if the Defendants' appeal is successful on one or more grounds, then it is most likely that there will be a need for the Court to revisit the Quantum Trial judgment, in effect there would be a strong possibility of holding a second Quantum Trial. To that point, much of the time and resources incurred on the first Quantum Trial would be wasted.²
29. If I do grant a stay of proceedings pending appeal and the appeal is unsuccessful, then the Quantum Trial can take place on all the heads of damage. To that point, Mr. Banks will have been delayed in seeking to have an assessment of damages and further enforcing his money judgment. In my view, on the evidence, there is no risk to him not being able to effect enforcement. On the other hand, if the appeal is successful, then the outcome of the appeal will have either amended or removed one or more of the heads of damage that I found. Thereafter, the Quantum Trial will need only address those heads of damage as refined by the appeal. In my view, imposing a stay on the proceedings will ensure that there

² Upon the Draft Ruling being issued for editorial comment, Mr. Elkinson made reference to his submission at the hearing on 23 July 2026 when he stated that this Court could be "done and dusted" by (i) granting a stay in respect of the Admitted Construction; and (ii) not granting a case management stay and proceeding to the Quantum Trial. I confirm that my notes [at page 290] and the Courtsmart [at 4:26:40] record the submissions by Mr. Elkinson about the Court being '... done and dusted with it as of October [2026], it should be over.' This was a reference to an earlier submission by Mr. Elkinson [at 4:07:35] that the Quantum Trial should take place and the appeal against both liability and quantum should proceed to the Court of Appeal together, thus shortening the time for the matter to be concluded. This is because the matter would not come back to the Supreme Court after the hearing in the Court of Appeal. I said during the hearing that I was attracted to the idea of this Court being 'done and dusted'. Later, in respect of a stay of any orders made against Mr. Banks, Mr. Elkinson submitted [at 4:36:55] in essence, that if it appeared that Mr. Storey is getting some advantage of not having orders enforced vis-a-vis trespass etc, and since Mr. Banks had not filed an appeal yet, there should be an adjournment or forbearance in relation to those orders against Mr. Banks which regard trespass. I confirm that clarification of these matters do not cause me to change this Ruling.

is no waste in costs incurred for preparing for and conducting a Quantum Trial before an appeal.

30. In applying the principles set out in *Mexico Infrastructure Finance LLC*, I am dutybound to ensure that this case is dealt with expeditiously and fairly, and always to be mindful of the need to save expenses, including the Court's resources. I have considered the case of *Jean-Pierre Malliez* where the Court considered a compromise of allowing proceedings in that case to advance to a certain stage before the stay was imposed pending the determination of the appeal. I have considered that approach in this case and raised it in the hearing where a compromise would be to impose a stay of execution in respect of the Admitted Construction but to allow the proceedings to continue in respect of the Directions Order. However, I have reviewed the Directions Order and in my view, it not practicable to arrive at a compromise position, because the directions call for action in respect of the areas for which there are grounds of appeal, such action being fresh expert reports and witness statements and instructing an expert and filing an expert report in relation to the conservation management plan. All these actions will incur time and costs, and in the event of any successful appeal on one or more grounds, they could possibly be wasted costs.

31. I have considered the Second Witness Statement of Mr. Banks and I do take it into account for the balancing exercise. I note that he describes his distress in litigating this matter over a long period of time. I also note that he says he must pass through the areas of the properties and so he has daily reminders of the circumstances. Thus, I do accept that there is some prejudice to Mr. Banks by the delay that would be caused by a case management stay.

32. In considering all the circumstances, including the Overriding Objective and using the Court's time efficiently, the balance is between wasted costs on the one hand and delay to Mr. Banks in being kept out of his assessment and any money award. In my view, the costs of the Quantum Trial will be significant. Thus, in applying the principles set out in *J Lucas (Batteries) Ltd*, I consider the likelihood of a waste of time and costs for the Quantum Trial to be a special circumstance for the granting of a stay. In my view, in applying the

principles set out in *Mexico Infrastructure Finance LLC*, in striking the balance and in the interests of justice, I am satisfied that I should exercise the Court's inherent jurisdiction to grant the case management stay in relation to the continuation of proceedings to the Quantum Trial pending determination of the Defendants' appeal.

Conclusion

33. In summary, I grant the Defendants' applications as set in the Summons dated 23 June 2026, pending the determination of the Defendants' appeal to the Court of Appeal, which, in effect, are the stay of execution in respect of the Admitted Construction as set out in paragraph 12 of the Judgment Order and a stay of the continuation of proceedings for the Quantum Trial as set out in the Direction Order.

34. Unless either party files a Form 31TC within 7 days of the date of this Ruling to be heard on the subject of costs, I direct that costs shall follow the event in favour of the Defendants against Mr. Banks on a standard basis, to be taxed by the Registrar if not agreed.

Dated 18 August 2026



HON. MR. LARRY MUSSENDEN
CHIEF JUSTICE OF THE SUPREME COURT